Supreme Court, U.S.
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No. 01-1171

IN THE

Supreme Court of the United States

CONNIE BURTON,

Petitioner,

v.

TAMPA HOUSING AUTHORITY and
UNITED STATES DEPARTMENT OF HOUSING
AND URBAN DEVELOPMENT,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

BRIEF IN OPPOSITION FOR RESPONDENT TAMPA HOUSING AUTHORITY

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QUESTION PRESENTED

Section 1437d(*l*)(6) of Title 42 of the United States Code (Supp. IV 1998) provides that public housing leases must contain a provision stating that:

> Any drug-related criminal activity on or off premises engaged in by a public housing tenant, any member of the tenant's household, or any guest or other person under the tenant's control, shall be cause for termination of tenancy.

The question presented is:

> Whether a tenant may be evicted from public housing regardless of whether it can be shown that the tenant knew, or had reason to know, of the household member's drug-related criminal activity.

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STATEMENT OF JURISDICTION

The opinion of the Court of Appeals was entered on November 7, 2001.

Petitioner seeks to invoke the jurisdiction of this Court under 28 U.S.C. § 1254(1) and Supreme Court Rule 10(a). Petitioner claims that the decision of the Eleventh Circuit in this case directly conflicts with the decision of the Ninth Circuit in *Rucker v. Davis*, 237 F.3d 1113 (9th Cir. 2001) (en banc), *cert. granted*, 150 L. Ed. 2d 805, 122 S. Ct. 24 (2001), 151 L. Ed. 2d 10, 122 S. Ct. 338 (2001).

This Court accepted jurisdiction in *Rucker*, and on February 19, 2002, heard oral argument in the case. On March 26, 2002, this Court reversed the judgment of the Ninth Circuit Court of Appeals. *Rucker v. Davis*, 535 U.S. __ (2002).

Respondent submits that jurisdiction *may* be sought under 28 U.S.C. § 1254(1) and Supreme Court Rule 10(a), but is discretionary in nature, and should not be granted in this case. Respondent opposes the granting of a writ of certiorari because the opinion of the Eleventh Circuit is just and proper, and is in accord with this Court's March 26, 2002 decision in the case of *Rucker v. Davis*, 535 U.S. __ (2002).

STATEMENT OF THE CASE

This case concerns the meaning of 42 U.S.C. § 1437d(*l*)(6) and 24 C.F.R. § 966.4(f)(12)(i)[1], which require

1. 42 U.S.C. § 1437d(*l*)(6) states:

> (*l*) Leases; terms and conditions; maintenance; termination
>
> Each public housing agency shall utilize leases which –
>
> (6) provide that any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants or any drug- related criminal activity on or off such premises, engaged in by a public housing tenant, any member of the tenant's household, or any guest or other person under the tenant's control, shall be cause for termination of tenancy;

24 C.F.R. § 966.4 states:

> (f) Tenant's obligations. The lease shall provide that the tenant shall be obligated:
>
> (12)(i) To assure that the tenant, any member of the household, a guest, or another person under the tenant's control, shall not engage in:
>
> (A) Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the PHA's public housing premises by other residents or employees of the PHA, or
>
> (B) Any drug-related criminal activity on or near such premises. Any criminal activity in violation of the preceding sentence shall be cause for termination of tenancy, and for eviction from the unit.

that each public housing agency include in its lease a provision permitting eviction based on a tenant's failure to ensure that certain individuals do not engage in drug-related criminal activity on or near the premises.

The Tampa Housing Authority ("THA") commenced eviction proceedings against Petitioner Connie Burton ("Burton") pursuant to her violation of dwelling lease provisions mandated by 42 U.S.C. § 1437d(*l*)(6) and 24 C.F.R. § 966.4(f)(12)(i). Burton commenced an action in the United States District Court for the Middle District of Florida, seeking an injunction prohibiting her eviction. Burton and THA each moved for summary judgment. The District Court denied Burton's motion for summary judgment, denied Burton's motion for a preliminary injunction, and granted THA's motion for summary judgment. The District Court thereafter denied Burton's motion to amend trial court findings, to reverse the summary judgment entered in THA's favor, and to enter summary judgment in Burton's favor. (Pet. App. 26-37.) Burton appealed, and the Court of Appeals, Eleventh Circuit, affirmed the District Court decision. (Pet. App. 1-25.)

In its opinion, the Eleventh Circuit Court of Appeals agreed with, and specifically adopted the reasoning of the dissent in the case of *Rucker v. Davis*, 237 F.3d 1113 (9th Cir. 2001) (en banc), *cert. granted*, 150 L. Ed. 2d 805, 122 S. Ct. 24 (2001), 151 L. Ed. 2d 10, 122 S. Ct. 338 (2001). The Eleventh Circuit held that the language, legislative history, and statutory context of 42 U.S.C. § 1437d(*l*)(6) support application of the lease eviction provision to all tenants, regardless of the non-existence of prior knowledge of proscribed drug-related criminal activity. (Pet. App. 1-25.)

On March 26, 2002, this Court reversed the Ninth Circuit Court of Appeals judgment in the *Rucker v. Davis* case, and stated:

> We hold that "Congress has directly spoken to the precise question at issue." *Chevron, U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S., at 842. Section 1437d(*l*)(6) requires lease terms that give local public housing authorities the discretion to terminate the lease of a tenant when a member of the household or a guest engages in drug-related activity, regardless of whether the tenant knew, or should have known, of the drug-related activity.

535 U.S.__ (2002).

Clarification of Facts Presented by Petitioner

1. Connie Burton is not just a THA tenant, but a former THA lease enforcement officer, whose job duties involved the preparation of Notice of Eviction for violation of the very lease provision that is the subject of this case. In addition, Connie Burton is a former THA property manager, whose job duties included explaining to tenants the meaning of the very lease provision that is the subject of this case.

In October 1998, Connie Burton added her adult son Narada Burton's name to her lease as an additional household member. She did this, despite the fact that Narada Burton had previously been arrested for drug-related criminal activity. (Pet. App. 2, footnote 1.)

On April 15, 1999, Narada Burton was arrested for participating in a drug transaction on THA grounds, within 1000 feet of an elementary school. (Pet. App. 2.) Narada Burton continued to live with Petitioner Burton after his arrest. (*Id.*, footnote 2.) On March 14, 2000, Narada Burton was convicted of this drug-related offense, and sentenced to three years probation.

2. THA commenced an action to evict Burton on May 12, 1999. (Pet. App. 27.)

3. Petitioner's description of the THA eviction process is incomplete and therefore misleading. THA leases contain a provision stating that:

> In deciding to evict for criminal activity, THA shall have the discretion to consider all of the circumstances of the case, including the seriousness of the offense, the extent of participation by or awareness of household members, and the effects the eviction would have both on household members not involved in the proscribed activity and on other residents of THA . . .

(Pet. App. 30.) Hence, THA has at all relevant times retained the option of exercising discretion when appropriate.

Petitioner's example of one of the original Plaintiffs in the case below[2] is incomplete and misleading, and thus ignores the valid basis that existed for enforcement of the subject lease eviction provision. The tenant referred to by

2. *See* Petition For A Writ Of Certiorari, ¶1, p.4.

Petitioner is a 71 year old woman who testified at deposition that her adult son probably visited her on the day that he was arrested for committing a drug offense on THA grounds, close to an elementary school and to her apartment. That tenant's son provided a duly executed affidavit affirming that he visited his mother's apartment the day of his drug-related arrest. That tenant's drug offender son was sentenced to a short term in prison. In spite of her son's drug-related activity, criminal conviction, and impending release from prison, the tenant testified at deposition that she would continue to allow her drug offender adult son into her apartment in the future. By so doing, that tenant showed a total disregard for the safety of her THA neighbors, many of whom have young children. As the tenant would have continued to provide access to THA property to a convicted felon with a history of drug-dealing on that property (near an elementary school), THA was justified in protecting its tenant population, young and old, by commencing eviction proceedings as to that tenant.

4. Following the commencement of the eviction proceeding, Burton brought an action in the United States District Court for the Middle District of Florida, seeking to enjoin THA from evicting Burton. The sole basis of this action was Burton's alleged lack of prior knowledge of her adult son's drug-related criminal activity.

The District Court denied Burton's summary judgment motion and granted THA's motion for summary judgment. The District Court relied on *Rucker v. Davis*, 237 F.3d 1113 (9th Cir. 2001) (en banc), *cert. granted*, 150 L. Ed. 2d 805, 122 S. Ct. 24 (2001), 151 L. Ed. 2d 10, 122 S. Ct. 338 (2001), and held that: (1) the 42 U.S.C. § 1437d clearly and unambiguously authorizes THA's policy to initiate eviction proceedings based on the actions of household members;

(2) Burton's First Amendment, substantive due process and equal protection claims must fail, as there is a rational basis for application of the THA eviction policy across-the-board to all tenants based on the actions of their household members, and based on the reasoning in the *Chavez v. Housing Authority of El Paso*, 973 F.2d 1245 (5th Cir. 1992) and the *Rucker v. Davis* panel decisions; and (3) Burton's procedural due process claims must fail, as Florida law provides the basic elements of procedural due process.

5. Burton appealed to the Eleventh Circuit Court of Appeals. The Eleventh Circuit affirmed the District Court, and found that the language of 42 U.S.C. § 1437d(*l*)(6) reasonably served the legislative goal of eliminating criminal drug-related activity in public housing complexes. The Court held that "[t]he government, given its status as a landlord, must be given authority to maintain its property at a habitable and safe standard for all of its tenants." (Pet. App. 6.) The Eleventh Circuit cited and adopted by reference the reasoning and opinion set forth in Judge Sneed's dissent in the *Rucker v. Davis* decision.

The Eleventh Circuit rejected Burton's due process claim, noting that housing is not a constitutional right, and that Congress may limit the right to reside in public housing to those individuals who agree to accept responsibility for the drug-related criminal activity of their household members and guests. (Pet. App. 20.)

The Eleventh Circuit also ruled against Burton with respect to her freedom of association claim, quoting from the dissent in *Rucker v. Davis*, 237 F.3d at 1138-1139, and relying on the cases of *Califano v. Jobst*, 434 U.S. 47, 98 S. Ct. 95, 54 L. Ed. 2d 228 (1977) and *Chavez v. The*

Housing Authority of the City of El Paso, 973 F.2d 1245 (5th Cir. 1992). The Court held that the statutorily-based eviction policy did not impair Burton's First Amendment right to freedom of association, as there was no proof how enforcement of the lease directly and substantially interfered with family living arrangements. (Pet. App. 23.)

REASONS FOR DENYING THE WRIT

Respondent respectfully submits that the Eleventh Circuit correctly interpreted the meaning of 42 U.S.C. § 1437d(*l*)(6) and 24 C.F.R. § 966.4(f)(12)(i), as evidenced by this Court's March 26, 2002 decision in the case of *Rucker v. Davis*, 535 U.S. __ (2002).

1. This Court's Decision In The *Rucker v. Davis* Case Resolves The Issues Raised Herein And Warrants Denial Of The Petition.

Supreme Court Rule 10 states that a petition for a writ of certiorari is a matter of judicial discretion, and "will be granted only for compelling reasons." There is no compelling reason to support the granting of the Petition in this case, as this Court's decision in the *Rucker v. Davis* case resolves the issue presented by the Petitioner herein.

The reversal of the Ninth Circuit Court of Appeals decision in the *Rucker v. Davis* case effectively resolved the short-lived conflict between the circuit Court of Appeals decisions, and thus renders a writ of certiorari unnecessary in this case.

2. The Eleventh Circuit Court of Appeals Correctly Held That There Is Nothing Ambiguous In The Language of 42 U.S.C. § 1437d(*l*)(6).

With respect to strikingly similar lease terms as those at issue in this case, this Court held, in the *Rucker v. Davis* case:

> that 42 U.S.C. § 1437d(*l*)(6) unambiguously requires lease terms that vest local public housing authorities with the discretion to evict tenants for the drug-related criminal activity of household members and guests whether or not the tenant knew, or should have known, about the activity.
>
> That this is so seems evident from the plain language of the statute.

Rucker v. Davis, 535 U.S. __ (2002).

Section 1437d(*l*)(6) authorizes eviction when "any member of a tenant's household, . . ." engages in "any drug related criminal activity." By this clear and straightforward language, § 1437d(*l*)(6) authorizes eviction when there is:

(1) *any* drug-related criminal activity;

(2) by any member of the tenant's household.

Neither of these two elements, separately or in combination, can reasonably be read to impose the additional requirement of proof that the tenant had advanced knowledge of the drug-related criminal activity.

The very presence of the term "any" in the phrase "any drug-related criminal activity," plainly points away from a tenant knowledge requirement.

> As we have explained, "the word 'any' has an expansive meaning, that is, 'one or some indiscriminately of whatever kind.' " *United States v. Gonzalez*, 520 U.S. 1, 5 (1997). Thus, *any* drug-related activity engaged in by the specified persons is grounds for termination, not just drug-related activity that the tenant knew, or should have known, about.

Rucker v. Davis, 535 U.S. __ (2002).

Respondent respectfully adopts by reference, as if fully set forth herein, this Court's analysis and conclusions in the March 26, 2002 *Rucker v. Davis* decision.

3. The Eleventh Circuit Court of Appeals Correctly Held That Enforcement of The Statutorily-Mandated Lease Provision Does Not Violate Burton's Substantive Due Process Rights.

This Court, traditionally "reluctant to expand the concept of substantive due process," recently noted that this doctrine has been applied to protect only "those fundamental rights and liberties which are, objectively, 'deeply rooted in this Nation's history and tradition,' and 'implicit in the concept of ordered liberty,' such that 'neither liberty nor justice would exist if they were sacrificed.' " *See Washington v. Glucksberg*, 521 U.S. 702 (1997).

Petitioner can demonstrate no fundamental right: (1) to a lease with the desired "scienter" requirement; or (2) to THA consideration of factors other than her breach of the terms of their lease. Moreover, even if Petitioner had a property right to a more favorable lease (which she lacks, since there is no statute, regulation or other law that confers such a right), substantive due process requires only that the deprivation of such property not be for irrational or invidious purpose. *See Pension Benefit Guaranty Corp. v. R.A. Gray & Co.*, 467 U.S. 717, 728-31 (1984). THA acted for rational purposes, seeking to evict a tenant whose household member engaged in drug-related activity (within 1000 feet of an elementary school) on THA property. The purpose of this eviction, to curb illegal drug use and other crime in THA's housing projects, was properly recognized by the Court of Appeals as a "legitimate housing objective" of Congress. (Pet. App. 17). Since THA acted for a rational purpose no substantive due process violation occurred.

4. The Eleventh Circuit Court of Appeals Correctly Held That Enforcement of The Statutorily-Mandated Lease Provision Did Not Violate Burton's First Amendment Freedom of Association Rights.

THA's application of § 1437d(*l*)(6) does not infringe upon Connie Burton's First Amendment associational rights. As this Court stated in the *Rucker v. Davis* decision:

> We agree with Judge O'Scannlain, writing for the panel that reversed the injunction, that the statute does not raise substantial First Amendment or Excessive Fines Clause concerns. *Lying v. Automobile Workers*, 485 U.S. 360 (1988) forecloses respondents claim that the eviction of

> unknowing tenants violates the First Amendment guarantee of freedom of association. See *Rucker v. Davis*, 203 F.3d 627, 647 (2000).

Rucker v. Davis, 535 U.S. __ (2002), footnote 6.

The THA eviction policy does not create an undue burden on Connie Burton's right to intimate association, as its effect on First Amendment activity is unintended and merely incidental. *See National Endowment for the Arts v. Finley*, 524 U.S. 569 (1998); *Chavez v. The Housing Authority of The City of El Paso*, 973 F.2d 1245 (5th Cir. 1992).

CONCLUSION

Based on the foregoing analysis, and for the reasons set forth by this Court in the *Rucker v. Davis* case, this Court should deny a writ of certiorari in this case, as the Eleventh Circuit Court of Appeals correctly interpreted the meaning of 42 U.S.C. § 1437d(*l*)(6) and 24 C.F.R. § 966.4(f)(12)(i).

Respectfully submitted,

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